



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3529

by Rep. Tom Demmer

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-56

was 720 ILCS 5/16-1.3

Amends the Criminal Code of 2012. Provides that any person who assumes the responsibility of managing the financial affairs of an elderly person who is a resident of a facility licensed under the Nursing Home Care Act or person with a disability who is a resident of a facility licensed under the Nursing Home Care Act commits financial exploitation of an elderly person or person with a disability if that person misappropriates the funds of the elderly person or person with a disability and fails to pay for the facility care of the elderly person or person with a disability. Provides that evidence of misappropriating funds and failure to pay for the care of an elderly or disabled person may include proof that the facility has sent to the person who has assumed responsibility of managing the financial affairs of an elderly person or person with a disability, by certified mail with confirmation receipt requested, notification of failure to pay facility care expenses incurred by the elderly person or person with a disability.

LRB099 09357 RPS 29562 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing  
5 Section 17-56 as follows:

6 (720 ILCS 5/17-56) (was 720 ILCS 5/16-1.3)

7 Sec. 17-56. Financial exploitation of an elderly person or  
8 a person with a disability.

9 (a) A person commits financial exploitation of an elderly  
10 person or a person with a disability when he or she stands in a  
11 position of trust or confidence with the elderly person or a  
12 person with a disability and he or she knowingly and by  
13 deception or intimidation obtains control over the property of  
14 an elderly person or a person with a disability or illegally  
15 uses the assets or resources of an elderly person or a person  
16 with a disability.

17 (a-5) Any person who assumes the responsibility of managing  
18 the financial affairs of an elderly person who is a resident of  
19 a facility licensed under the Nursing Home Care Act or a person  
20 with a disability who is a resident of a facility licensed  
21 under the Nursing Home Care Act commits financial exploitation  
22 of an elderly person or a person with a disability if that  
23 person misappropriates the funds of the elderly person or

1 person with a disability and fails to pay for the facility care  
2 of the elderly person or person with a disability. For purposes  
3 of this subsection (a-5), a person assumes the responsibility  
4 of managing the financial affairs of an elderly person or a  
5 person with a disability when he or she receives, has access  
6 to, handles, or controls the funds of the elderly person or  
7 person with a disability, including, but not limited to,  
8 benefits under the federal Social Security Act, pension, cash,  
9 or other income.

10 (b) Sentence. Financial exploitation of an elderly person  
11 or a person with a disability is: (1) a Class 4 felony if the  
12 value of the property is \$300 or less, (2) a Class 3 felony if  
13 the value of the property is more than \$300 but less than  
14 \$5,000, (3) a Class 2 felony if the value of the property is  
15 \$5,000 or more but less than \$50,000, and (4) a Class 1 felony  
16 if the value of the property is \$50,000 or more or if the  
17 elderly person is over 70 years of age and the value of the  
18 property is \$15,000 or more or if the elderly person is 80  
19 years of age or older and the value of the property is \$5,000  
20 or more.

21 (c) For purposes of this Section:

22 (1) "Elderly person" means a person 60 years of age or  
23 older.

24 (2) "Person with a disability" means a person who  
25 suffers from a physical or mental impairment resulting from  
26 disease, injury, functional disorder or congenital

1 condition that impairs the individual's mental or physical  
2 ability to independently manage his or her property or  
3 financial resources, or both.

4 (3) "Intimidation" means the communication to an  
5 elderly person or a person with a disability that he or she  
6 shall be deprived of food and nutrition, shelter,  
7 prescribed medication or medical care and treatment or  
8 conduct as provided in Section 12-6 of this Code.

9 (4) "Deception" means, in addition to its meaning as  
10 defined in Section 15-4 of this Code, a misrepresentation  
11 or concealment of material fact relating to the terms of a  
12 contract or agreement entered into with the elderly person  
13 or person with a disability or to the existing or  
14 pre-existing condition of any of the property involved in  
15 such contract or agreement; or the use or employment of any  
16 misrepresentation, false pretense or false promise in  
17 order to induce, encourage or solicit the elderly person or  
18 person with a disability to enter into a contract or  
19 agreement.

20 The illegal use of the assets or resources of an elderly  
21 person or a person with a disability includes, but is not  
22 limited to, the misappropriation of those assets or resources  
23 by undue influence, breach of a fiduciary relationship, fraud,  
24 deception, extortion, or use of the assets or resources  
25 contrary to law.

26 A person stands in a position of trust and confidence with

1 an elderly person or person with a disability when he (i) is a  
2 parent, spouse, adult child or other relative by blood or  
3 marriage of the elderly person or person with a disability,  
4 (ii) is a joint tenant or tenant in common with the elderly  
5 person or person with a disability, (iii) has a legal or  
6 fiduciary relationship with the elderly person or person with a  
7 disability, (iv) is a financial planning or investment  
8 professional, or (v) is a paid or unpaid caregiver for the  
9 elderly person or person with a disability.

10 (d) Limitations. Nothing in this Section shall be construed  
11 to limit the remedies available to the victim under the  
12 Illinois Domestic Violence Act of 1986.

13 (e) Good faith efforts. Nothing in this Section shall be  
14 construed to impose criminal liability on a person who has made  
15 a good faith effort to assist the elderly person or person with  
16 a disability in the management of his or her property, but  
17 through no fault of his or her own has been unable to provide  
18 such assistance.

19 (f) Not a defense. It shall not be a defense to financial  
20 exploitation of an elderly person or person with a disability  
21 that the accused reasonably believed that the victim was not an  
22 elderly person or person with a disability.

23 (g) Civil Liability. A person who is charged by information  
24 or indictment with the offense of financial exploitation of an  
25 elderly person or person with a disability and who fails or  
26 refuses to return the victim's property within 60 days

1 following a written demand from the victim or the victim's  
2 legal representative shall be liable to the victim or to the  
3 estate of the victim in damages of treble the amount of the  
4 value of the property obtained, plus reasonable attorney fees  
5 and court costs. The burden of proof that the defendant  
6 unlawfully obtained the victim's property shall be by a  
7 preponderance of the evidence. This subsection shall be  
8 operative whether or not the defendant has been convicted of  
9 the offense.

10 (h) If a person is charged with financial exploitation of  
11 an elderly person or a person with a disability that involves  
12 the taking or loss of property valued at more than \$5,000, a  
13 prosecuting attorney may file a petition with the circuit court  
14 of the county in which the defendant has been charged to freeze  
15 the assets of the defendant in an amount equal to but not  
16 greater than the alleged value of lost or stolen property in  
17 the defendant's pending criminal proceeding for purposes of  
18 restitution to the victim. The burden of proof required to  
19 freeze the defendant's assets shall be by a preponderance of  
20 the evidence.

21 (i) Evidence of misappropriating funds and failure to pay  
22 for the facility care of an elderly person or person with a  
23 disability may include, but is not limited to, proof that the  
24 facility has sent to the person who has assumed responsibility  
25 of managing the financial affairs of an elderly person or  
26 person with a disability, by certified mail with confirmation

1 receipt requested, notification of failure to pay facility care  
2 expenses incurred by the elderly person or person with a  
3 disability.

4 (Source: P.A. 96-1551, eff. 7-1-11; 97-482, eff. 1-1-12;  
5 97-865, eff. 1-1-13.)